United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

75-7658

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-7658

RALPH J. LOMBARDI,

Appellant

Vs.

CHARLES BOCKHOLDT,
NORMAN EBENSTEIN, ATTY.
JAMES F. COLLINS, JUDGE
CHARLES S. HOUSE, JUDGE
ALVA P. LOISELLE, JUDGE
HERBERT S. MacDONALD, JUDGE
JOSEPH W. BOGDANSKI, JUDGE
JOSEPH S. LONGO, JUDGE, and
M. JOSEPH BLUMENFELD, U.S.D.J.

Appellees

B

P

S

APPELLANTS REPLY BRIEF

Appeal from the United States District Court for the District of Connecticut.

Ralph J. Lombardi
224 So. Elm Street
Winisor Locks, Conn. 06096

Pro Se

4

Exhibits Attached

C MOTION FOR POSTPONEMENT .....

Q MOTION TO RECONSIDER .....

R DENIAL Of Same

S MEMORANDUM TO SUPPORT CLAIM FOR DENIAL OF DISMISSAL

F CLAIM FOR SUMMARY JUDGEMENT FOR THE PLAINTIFF

U AMICUS CURIAE BRIEF (filed by Andrew J. Melechinsky)

Reply Brief

Issues

Does the U. S. Constitution grant immunity from suit to judges?

Are judges bound by oath or affirmation to support the United States Constitution?

Are judges duty bound to be reasonable?

In order to be reasonable is it a judge's legal, ministerial duty to take up the issues raised by litigants?

Was it reasonable to expect a judge to disqualify himself from presiding over a case in which he "loses his head" after a reasonable challenge of his partiality was exercised by the Appellant?

Jurisdiction for this action was brought under one or more of the following in addition to title 42 section 1983 of the U. S. code:

Title 18 sections 242, 241 and title 28 section 1343. Also jurisdiction is continued under the U. S. Constitution:

Article III sections 1 and 2, Article VI paragraphs 2 and 3, and under amendment IX, the reason for the Complaint is the Defendants Bockholdt, Ebenstein, Collins, Louse, Loiselle, MacDonald, Bogdanski and Longo violated one or more of the following:

General Statutes of Connecticut: 1-25, 53A-151, 53A-156, 53A-157 and 53A-165, Canons of Professional Ethics numbered: 3, 5, 8, 9, 15, 16, 18, 21, 22, 29, 30, 31, 32, 41, and 44, and Canons of Judicial Ethics numbered: 2, 3, 4, 5, 10, 11, 19, 20, 22, 34, and 36 as they appear in the Connecticut Practice Book, as well as the others listed in the COMPLAINT. Defendant Blumenfeld has violated one or more of the above mentioned U. S. Constitutional Articles, the U. S. Code, title 28, sections 144 and 455 (A) and one or more of the Canons of Judicial Ethics 2, 3, 4, 5, 15, 19, and 20. Judges are employees of the people (government) and are responsible for their action. Therefore judges are NOT immune to suit. See Firemans Insurance Company of Newark N. J. v. Washburn County, 2 Wis., 2d 214; 85 N.W. 2d 840,

(1957). "Government immunity violates the common law maxim that everyone shall have a remedy for an injury done to his person or property." Also see Rabon v. Rowen Memorial Hospital, Inc., 269 N.S. 1, 13; 152 S.E. 1d 485, 493 (1967). "Immunity fosters neglect and breeds irresponsibility, while liability promotes care and caution, which caution and care is owed by the government to its people." In re Reich v. State Highway Department, 336 Mich. 617; 194 N.W. 2d 700 (1972), the Supreme Court of Michigan cited Krause v. Ohio, App 2d 1; N.W. 2d 321 (1971), "herein ..... Ohio's doctrine of Government immunity was held unconstitutional and others too numerous to mention." When appellants are filing actions "pro se" (or in Pro Per), pleading the court's indulgence in the format of documents, etc., reference is Louisville & N. R. Co. v. Schmidt, 177 U. S. 230 sup ct 620; 44 L Ed 747, "..... in determining whether such Constitutional Rights were denied, we are governed by the SUBSTANCE of things, NOT by mere FORM ....." The federal government is expressly prohibited from invading common law rights of the people. How then can a federal court do other than PROTECT a petitioner's common law rights? See Standler - Supreme Court of Florida en banc, 36 so 2d 443, 445 (1948), "The Bill of Rights was provided as a Barrier, to protect the individual against arbitrary exactions of majorities, executives, legislatures, courts, sheriffs, and prosecutors, and it is the primary distinction between democratic and totalitarian processes. Any departure from the safeguards in the Bill of Rights,

is apt to be an appropriation of some phase of the totalitarian way."

Article I, Sec. 3, Par 7 of the U. S. Constitution backs this concept up with the words, "but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law." The Declaration of Independence and the U. S. Constitution did away with the tyrannical rule of Judicial Immunity.

The United States Constitution is the WILL OF THE PEOPLE, clearly set forth for their agents, elected and appointed, to follow and OBEY. No statu' (law) may supercede it and anything that is not pursuant to it is not law, neither Acts of Congress, State Legislatures and constituents, or executive orders of any kind. The only change possible in this statement of the Will of the People is by the amendment process set forth in Article V of said document. It may NOT be changed BY ANY OTHER MEANS. Any purported change effected by any other means is a "pretended" act and is VOID and of no lawful effect. See Perry vs U. S., 294 U. S. 330, 353 L (1935). Fourteenth Amendment U. S. Constitution, 1868. Preamble to the Bill of Rights. Federalist Paper No. 84, Hamilton. West Va. State Board of Education et al vs Barnett et al., 319 U. S. 624, 638 (1943). Bell vs Hood, Dist. Ct. S. D. Calif, Cent. Div., 71 F Supp. 813, 816 (1947). Standler, Sup Ct Florida en banc, 36 so 2d 443 (1948). Marbury vs Madison, 5 U.S. 137, 176 (1803).

It is clear that neither judges nor any other government employers are immune to suit. Any purported laws or precedent (case) laws to the contrary are in violation of the United States Constitution, and are therefore null and void. All judges must uphold the U. S. Constitution, (as agreed to by oath or affirmation) and this Court's decision must be in conformance with the supreme law of the land (U.S. Constitution) in order to have any validity.

Defendant Bockholdt swore an oath under 1-25:

> "You solemnly swear that the evidence you shall give, concerning the case now in question, shall be the truth, the whole truth and nothing but the truth; so help you God",

then Bockholdt perjured himself throughout his testimony, as shown by the evidence and transcripts of telephone conversations, exhibits A, AA-1, AA-2 and AA-3 of the Complaint. Also exhibits B and C of the Complaint. His false testimony was given on the advise of Defendant Ebenstein, who was acting under the color of state law. He could have excercised his 5th amendment right to remain silent. Defendant Ebenstein swore,

> "You **solemnly** swear that you will do no falsehood, nor consent to any to be done in court, and if you know of any to be done, you will give information thereof to the judges, or one of them, that it may be reformed; you will not wittingly or willingly promote, sue or cause to be sued, any false or unlawful suit, or give aid, or consent to the same; you will delay no man for lucre or malice, but will exercise the office of attorney, with the court wherein you may practice, according to the best of your learning and discretion, and with fidelity, as well to the court as to your client; so help you God."

Yet Atty. Ebenstein lied to the court on July 6, 1973 in front of witnesses. (see page 5 of Appellant's Brief and exhibits B and C pages 8 and 2 respectively). It is clear that Defendant Ebenstein was acting under the "color of law". Defendant Judges Collins, House, Loiselle, MacDonald, Bogdanski and Longo each took this oath under Article eleventh of the Constitution of Conn. and 1-25;

> "You do solemnly swear (or affirm, as the case may be) that you will support the Constitution of the United States, and the Constitution of the state of Conn., so long as you continue a citizen thereof; and that you will faithfully discharge, according to law, the duties of the office of judge to the best of your abilities. So help you God."

The state Defendant Judges all acting under the "color of state law" abused their discretion, inter alia, thereby violating their oath to uphold the Constitution(s).

The United States Constitution does not grant immunity to judges and any purported laws to the contrary are null and void per se, and not conforming with the U. S. Constitution, and all judges are to uphold the U. S. Constitution first and foremost. No other laws, or rulings can take precedence over the Constitution.

It is clear that Defendant Judge Blumenfeld must have engaged in ex parte communications with Defendant Ebenstein's attorney regarding the MOTION FOR POSTPONEMENT OF TAKING OF DEPOSITIONS filed on August 27, 1975. It should be noted that the MOTION was already granted by Defendant Judge Blumenfeld on August 25, 1975 and must have been preceded by an ex parte act. (see attached exhibit "C"). The MOTION was formally filed on August 27, 1975. Sometime on or subsequent to Aug. 25, 1975 after

the Appellant filed the NOTICE OF TAKING OF DEPOSITIONS, the Defendant Judge Blumenfeld must have had ex parte conversations with the Defendants' attorneys. Atty. Shaefer confirmed this to the Appellant. Upon notification of August 27, that the above MOTION had been filed the Appellant promptly filed a CLAIM FOR DENIAL OF MOTION FOR POSTPONEMENT OF TAKING OF DEPOSITIONS (within 24 hours) only to be told by the assistant blerk that the MOTION had already been granted. It was then on the morning of August 28, that the Appellant received permission from the assistant clerk to see the Judge. Ellen Anderson, the secretary arranged for the Appellant to enter Judge Blumenfeld's office. When the Appellant stated that "if there is any impropriety in other counsel not being present",- the Judge stated "it's o.k., you're pro se, you're representing yourself." After showing the Defendant Judge Blumenfeld his CLAIM FOR DENIAL ..... filed a few minutes before, and stating that he was told by the assistant clerk that the MOTION FOR POSTPONEMENT ..... was already granted, the Appellant informed the Defendant that he needed the depositions to further support the Appellant's case, but that if necessary he could question the Defendants at the hearing scheduled for Sept. 29, 1975. At this time the Defendant Judge stated "There're not going to be here. You're not going to ask anybody any questions." When the Appellant stated again his need for the testimony the said Defendant Judge stated "We'll argue it out in court."

The Appellant queried "We'll?" and waited for a response. None was offered. The Appellant then stated that the Judge was supposed to be neutral and it was the litigants' prerogative to argue the case. The Appellant asked the Defendant Judge to instruct his secretary Ellen Anderson, to record the above comments. At this time the Defendant Judge shouted "Get out of this office!" The Appellant left immediately. The above was testified to by the Appellant at a hearing on Sept. 26, 1975. Atty. Moller, among others, was a witness to that testimony. Defendant Judge Blumenfeld was subpoenaed to testify at that hearing, but failed to appear. The Attorney who represented Defendant Blumenfeld did not file an appearance, but was allowed to make a presentation to the court. Thus the Appellant was denied an opportunity to obtain testimony from Defendant Judge Blumenfeld, who failed to honor the subpoena. In the absence of denials by Defendant Judge Blumenfeld of the above mentioned testimony in this case, this appeal court must consider the testimony to be true. (see 256 F. 2d 241). The Appellant needed the testimony of all of the Defendants but Defendant Judge Blumenfeld illegally quashed the subpoenae, denying to the Appellant an opportunity to question the said Defendants. (see transcript of hearing of Sept. 29, 1975.)

The Claim that the Defendant Judge Blumenfeld did not act improperly because of the short period of time in which to act, is invalid. Timing was important to the Appellant also, and no ex parte action which would deny to the Appellant an opportunity to object can be considered legitimate. An explanation follows:

1. Exhibit C illustrates that an ex parte action on

Defendant Ebenstein's behalf was already "granted" on Aug. 25, 1975.

2. Aug. 25, 1975 was on a Monday, the same day the Appellant filed the NOTICE OF DEPOSITIONS at 11:43 A.M.

3. It should be noted that between Aug. 25 and Aug. 30 when the depositions were scheduled, there was more than ample time for normal procedures.

4. In a similar situation in which there was much less time to act, Defendant Judge Blumenfeld had the assistant clerk of the court phone the Appellant on Sept. 25, 1975 at 4:00 P.M. to notify him of a hearing to be held on Sept. 26, 1975 at 9:00 A.M.

5. Defendant Judge Blumenfeld could have held a hearing on Friday, Aug. 29, 1975 if he wanted to be fair and had not already made an ex parte ruling.

Defendant Ebenstein's argument about the "labor Day weekend" has no merit in the light of the facts. All references made to "supporting" cases by the Defendant Ebenstein purporting to establish immunity for judges do not conform to the U. S. Constitution and are therefore null and void. All references made to "supporting" cases by the Defendant Ebenstein purporting to establish that the Defendants (except Blumenfeld) were not acting under the "color of state law" do not conform to the United States Constitution and are therefore null and void. (see pages 9 and 10 of Appellant's Brief. Batista v. Weir 340 F 2d 74) See exhibit Q and R to conclude that the Appellant made efforts

to have the Connecticut Supreme Court Judges recognize their legal ministerial duty to take up the issues of the Appellant (listed on pages 5 and 6 of the Appellant's Brief filed with this court in Jan. 1976.

The denial (exhibit R) is an abuse of discretion and malice inter alia. It is clearly against the U. S. Constitution, which is the Supreme Law of the Land, and no one is above answering to it.

The fact that Defendant Judge Blumenfeld ignored the issues raised in:

the MOTION FOR INJUNCTION ..... (Part of COMPLAINT)
the MEMORANDUM TO SUPPORT CLAIM FOR DENIAL OF DENIAL
the CLAIM FOR SUMMARY JUDGEMENT FOR THE PLAINTIFF, filed by the Appellant, (exhibits S and F and the AMICUS CURIAE BRIEF filed by ANDREW J. MELECHINSKY (exhibit U) mandates that this court:

1. Vacate Defendant Judge Blumenfeld's erroneous decision.
2. Remand the case to the U. S. District Court.
3. Disqualify said Defendant Judge Blumenfeld from any further action in this case.

Appellant Ralph J. Lombardi

224 S. Elm St.
Windsor Locks, Conn. 06096.

CERTIFICATION

This is to certify that a copy of the above Brief was mailed this fourteenth day of February, 1976 to:

Attorney General Carl R. Ajello
Attn: Daniel R. Schaefer, Asst. Atty. General
30 Trinity Street
Hartford, Conn. 06115

William R. Moller and/or
Maurice T. FitzMaurice
41 Lewis Street
Hartford, Conn. 06103

John P. McKeon
750 Main Street
Hartford, Conn. 06103

M. Joseph Blumenfeld, U.S.D.J.
450 Main Street
Hartford, Conn. 06103

Ralph J. Lombardi

Ralph J. Lombardi
224 So. Elm Street
Windsor Locks, Conn.

Feb. 14, 1976

FILED

AUG 27 11 23 AM '75

U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RALPH J. LOMBARDI Plaintiff	)	CIVIL & CRIMINAL H-75-221
VS.	)	
CHARLES BOCKHOLDT NORMAN EBENSTEIN, ATTY. JAMES F. COLLINS, JUDGE CHARLES S. HOUSE, JUDGE ALVA P. LOISELLE, JUDGE HERBERT S. MacDONALD, JUDGE JOSEPH W. BOGDANSKI, JUDGE, and JOSEPH S. LONGO, JUDGE Defendants	)	August 26, 1975

FILED
AUG 28 1 25 PM '75
U.S. DISTRICT COURT
HARTFORD, CONN.

Granted
8-27-75
A.V.B. Bucsot.

MOTION FOR POSTPONEMENT OF TAKING OF DEPOSITIONS

Pursuant to Rule 30 F. R. C. P. the Defendant, Norman Ebenstein, hereby requests the Court to order the taking of the depositions noticed on August 25, 1975, by the Plaintiff, to be postponed until the Court has decided the Pending Motions for Dismissal.

DEFENDANT,
NORMAN EBENSTEIN, ATTY. ONLY

By William R. Moller

William R. Moller of
Regnier, Moller & Taylor
41 Lewis Street
Hartford, Connecticut
His Attorney

REGNIER, MOLLER
& TAYLOR
ATTORNEYS AT LAW
41 LEWIS STREET
HARTFORD, CONN. 06103

Exhibit C

NO. 7530

RALPH LOMBARDI	:	SUPREME COURT
VS	:	HARTFORD COUNTY
CHARLES BOCKHOLDT	:	DECEMBER 20, 1974

MOTION FOR SPECIFIC INFORMATION REGARDING IT'S DECISION AND A REQUEST TO REVIEW IT'S DECISION

The Plaintiff requests the following:

1. The identity of each Judge by name and if all concurred and which dissented, if any.
2. Specific answers to the questions and issues raised in the Plaintiff's Brief and Reply Brief, as well as oral aurgument.
3. If the Court did or did not listen to the taped telephone conversations which were part of the Brief and that the Plaintiff specifically requested that it do.

PLAINTIFF APPELANT,

By Ralph Lombardi
Ralph Lombardi
Pro Se

Exhibit Q

No. 7530

Ralph Lombardi v. Charles Borkholdt

January 7, 1975, The plaintiff's "Motion for Specific Information Regarding Its Decision and a Request to Reman Its Decision" in the appeal from the Court of Common Pleas in Hartford County is dismissed.

By the Court,

Shea

Chief Justice.

Exhibit R

Filed August 1st 1975
District Court

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RALPH J. LOMBARDI Plaintiff Vs. CHARLES BOCKHOLDT NORMAN EBENSTEIN, ATTY. JAMES F. COLLINS, JUDGE CHARLES S. HOUSE, JUDGE ALVA P. LOISELLE, JUDGE HERBERT S. MacDONALD, JUDGE JOSEPH W. BOGDANSKI, JUDGE and JOSEPH S. LONGO, JUDGE Defendants	)	CIVIL & CRIMINAL H-75-221 August 1, 1975

MEMORANDUM TO SUPPORT CLAIM FOR DENIAL OF DISMISSAL

The Plaintiff's suit is not frivolous as the Defendant Judges have asserted in their MEMORANDUM IN SUPPORT OF MOTION TO DISMISS, and any Judge honor bound, by the taking of his oath, to be a Judge, could not dismiss this suit after reading the transcripts and listening to the tapes of them, submitted to this Court, without himself joining the Defendants as a willing co-conspirator, attempting to deny justice, by condoning the wrongful actions, enumerated in part in the complaint filed on July 1, 1975.

On the contrary, the decision of the trial Judge, (Defendant James F. Collins) copy attached, was itself frivolous, and devoid of logical reasoning in assessing the evidence presented to the Court on July 10, 1973. (Lombardi vs. Bockholdt #96846).

The guilt, of the Defendant Charles Bockholdt, was completely ignored and/or condoned, and his Attorney's (Defendant Norman Ebenstein) misconduct, and lies to the Courts, in like fashion, were also condoned and/or ignored by the Defendant Judges.

Exhibit S

Does the end justify the means? The Defendant Judges, Collins, House, Loiselle, MacDonald, Bogdanski and Longo, all violated their oaths of office, by not applying the rules of evidence properly. "An erroneous conclusion from subordinate facts is an error of law" 96C275. inter alia. The Supreme Court of Connecticut (Defendant Judges) did not take up the issues raised by the Plaintiff, issues that were briefed - a direct violation of the Canons of Judicial Ethics, thereby violating, illegally, the United States and this State's constitutional rights, of the Plaintiff, Ralph J. Lombardi, to a fair and impartial judgement.

This Court must read the transcripts of the telephone conversations and listen to the tapes, admitted to by the Defendant, Charles Bockholdt, and take up the issues and evidence in the Brief and Reply Brief, which the Plaintiff submitted to this Court. They are Prima Facie evidence that the Defendant, Charles Bockholdt is guilty, and this Court can not properly entertain any MOTION TO DISMISS.

Civil case #B-74-176, which the Defendants have submitted to this Court as a precedent, is unlike this case, in that the Plaintiff in Lombardi vs. Bockholdt #96846 and #7530, presented a corroborative witness tying the Defendant, Charles Bockholdt to the Plaintiff's wife. (See Plaintiff's Reply Brief, Exhibit C, Pages 13 A, 7 A, 8 A, 9 A, 10 A and 20 A) On page 20 A the Defendant himself, in his own brief corroborates the Plaintiff's witness's testimony. The Plaintiff is certain that the Judge in this case can readily recognize the guilt of the Defendants, upon reading the transcripts of the tapes, while listening to them; then referring to the Reply Brief, and all the other papers, briefs and exhibits previously submitted by the Plaintiff.

Why didn't the trial Judge recognize the wrong perpetrated by the Defendant and his Attorney?

Why didn't the Supreme Court Judges recognize the prejulice of the trial Judge's decision?

Why didn't they take up the issues raised by the Plaintiff? Even after a specific request to do so? This request was denied!

Why was the request denied?

This Court has the authority to review any decision from any lower court, within it's district. The Defendants' statement that this Court does not have jurisdiction, is a contradiction. The MOTION TO DISMISS must and should be denied in order to avoid coming into conflict with the Constitution, and other laws of the United States of America.

In reply to paragraph #1, of the Defendants' MOTION TO DISMISS, the Plaintiff refers to motions 1, 2, 4, and 5 of the COMPLAINT. The Plaintiff has indeed stated a claim for which relief can be granted.

In reply to paragraph #2, of the Defendants' MOTION TO DISMISS, the Plaintiff refers to Exhibit H attached, and the the Constitution of the United States, Article 3, sections 1 and 2, among others. Judicial officials are <u>not</u> immune from criminal accountability.

In response to the Defendants' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS, the Plaintiff calls the attention of the Court to Article 3, sections 1 and 2 of the United States Constitution, which is the "Supreme Law of the Land" and to Exhibit H attached. Claims for Redress under Federal Constitution and or Federal Laws can never be considered frivolous, nor can oral argument, in support of such claim be considered frivolous, either.

The Plaintiff expects this Court to address itself to all constitutional points raised by the Plaintiff.

Ralph J. Lombardi
Pro Se

I, Ralph J. Lombardi, do hereby certify that I have this date mailed a copy of the foregoing "Memorandum to Support Claim for Denial of Dismissal", postage prepaid to:

Attorney General Carl R. Ajello
Attn: Daniel R. Schaefer, Assistant Attorney General
30 Trinity Street,
Hartford, Connecticut 06115

William R. Moller and/or Maurice T. FitzMaurice
41 Lewis Street
Hartford, Connecticut 06103

John P. McKeon
750 Main Street
Hartford, Connecticut 06103

Ralph J. Lombardi
224 So. Elm St.
Windsor Locks, Conn.

August 1, 1975

NO. 096046

RALPH LOMBARDI	:	COURT OF COMMON PLEAS
VS.	:	HARTFORD COUNTY
CHARLES BUCKBOLDT	:	JULY 31, 1973

MEMORANDUM ON PLAINTIFF'S MOTION TO REOPEN JUDGMENT

Judgment was entered for the defendant in this case on April 19, 1973. Subsequently, a motion of the plaintiff's attorney to withdrew was granted, and the plaintiff, now pro se, filed an appeal and on June 3, 1973 wrote to the court indicating he had informational evidence that the defendant had committed perjury at the trial. The court elected to treat the plaintiff's letter as a motion to reopen judgment on the grounds of newly discovered evidence and the same was argued before the court on July 6, 1973 and again on July 10, 1973.

The new evidence the plaintiff presented to the court at the hearings on the motion consisted of tape recordings of telephone conversations between the plaintiff and the defendant occurring on May 2, 1973 (plaintiff's Exh. AA-1), May 25, 1973 (plaintiff's Exh. BB-1) and June 1, 1973 (plaintiff's Exh. CC-1). Submitted with these were typewritten transcriptions of the tapes (plaintiff's Exh.'s AA-2, BB-2, and CC-2, respectively). With the exception of one word on page 6 of plaintiff's Exh. CC-2 where the defendant is quoted as saying "Yea - Ralph - he's out

to save a client" and the defendant claims that the word 'Yes' on the tape is 'well,' the parties are in agreement that the transcriptions accurately reflect the tapes.

The plaintiff's contention is that in these telephone conversations the defendant has admitted that he in fact did have sexual relations with the plaintiff's wife contrary to what he testified to at the trial in this action.

After a careful reading of the transcriptions, the court concludes that the defendant did not make any such claimed admission. While some of the defendant's statements can be inferentially construed to support the plaintiff's claim, it is also true, as pointed out by the defendant's attorney in his brief, they can also be inferentially construed as evidence of the defendant's desire to put an end to this litigation. The action has been pending for several years, defendant has been subjected to threats by the plaintiff both in these tapes (plaintiff's Exh. AA-2, pp. 1-2) and, from the testimony at the trial, in the past, and it is understandable that he is anxious to have the matter conclusively terminated.

While this court has the right to change or modify its decision at any time before final judgment or, upon proper proceedings, before the expiration of the spring term of court, Tyler v. Aspinwall, 73 Conn. 493, 497, it should not do so without strong reasons and unless upon all the evidence submitted it is convinced that not to do so would result in an injustice. Ideal Financing Association v. LaBonte, 120 Conn. 190, 195. Such a rule is necessary or there would never be an end to litigation. Lortch v. State, 142 Conn. 18.

The addition of the evidence submitted on this motion, in the opinion of this court, would not have produced a different result had it been submitted at the trial of this action as it

merely goes to the credibility of the defendant's testimony and it is not sufficient to change the court's view that the plaintiff failed to sustain his burden of proof.

The motion is denied.

COLLINS J.

MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING PLAINTIFF'S POSITION THAT THERE IS NO PROPER JUDICIAL IMMUNITY UNDER THE COMMON LAW OR THE CONSTITUTION, AND CONSEQUENTLY NO OFFICIAL IMMUNITY FOR ANY GOVERNMENT OFFICIAL.

The wording of 42 USC 1983 is as follows:

> "EVERY PERSON WHO, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, SUBJECTS, or causes to be subjected, ANY CITIZEN of the United States or other person TO THE DEPRIVATION OF ANY RIGHTS, privileges or immunities SECURED BY THE CONSTITUTION and laws, SHALL BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, equity, or other proper proceeding for redress.

Defendant will note that the Statute does NOT say, "Every person EXCEPT JUDGES AND GOVERNMENT EMPLOYEES." The Statute says "every person". A judge is a person. Every employee of government is "a person".

Section 1983 has been held to provide a civil action to protect persons against misuse of power possessed by virtue of state law and made possible because the Defendant "was clothed with the authority of the state." Davis v Johnson (1955 DC Ill) 138 F Supp 572; Johson v Henne (1966, CA2 NY) 355 F2d 129.

That an officer or employee of a State or one of its subdivisions is deemed to be acting under "color of law" as to those deprivations of right committed in the fulfillment of the tasks and obligations assigned to him. Monroe v Pape, (1961) 365 US 167.

Actions by state officers and employees, even if unauthorized or in excess of authority, can be actions under "color of law" Stringer v Dilger, (1963, CA 10 Colo) 313 F2d 536.

It has been stated that there is no convincing proof that the Congresses responsible for the Civil Rights Act ever intended to immunize any State or territorian officials or employees, and that it is more likely that the Congress intended to do away with whatever common-law immunities existed. Congressional Globe, 42d Cong. 1st Sess., 365-6, 368, 385 (1871).

In an 1880 case, Ex parte Virginia (1879), 100 US 339, the Supreme Court decided that a Judge was not immune from criminal sanctions under the Civil Rights Acts.

Although it was held in Pierson v Ray, (1967) 386 US 547 that judges acting within the course and scope of their judicial duties are immune from damage suits, it is here pointed out that the emphasis must be on "WITHIN THE SCOPE OF THEIR JUDICIAL DUTIES."

EXHIBIT H

It is here alleged that to deprive the Plaintiff of his Constitutional rights is NOT WITHIN THE SCOPE OF ANY JUDICIAL DUTY.

It is also pointed out that here proof of lack of judicial immunity is to be domonstrated. It follows that if judges lack judicial immunity for depriving a person of Constitutional rights, then prosecuting attorneys, marshalls, bailiffs, court-clerks, deputies, and all officials of bureaus and commissions have no official immunity for their acts which deprive a person of Constitutional rights.

It cannot be truthfully and lawfully alleged that judges do have immunity when depriving one of Constitutional rights. It must be plainly to the contrary. Under Article VI, Clause 3 of the Constitution of the United States:

> "...all...judicial officers, both of the United States and of the several States, SHALL BE BOUND BY OATH or affirmation to support this Constitution;..."

In Clause 2, preceding the foregoing, we have:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land; AND THE JUDGES IN EVERY STATE SHALL BE BOUND THEREBY, anything in the constitution or laws of any State to the contrary notwithstanding.

Here we have the crux to the entire problem. A judge by law must swear to support the Constitution and constitutional laws of the United States over and above all laws and constitutions of States which may be in conflict. Needless to add, custom and usage have even less weight than constitutions and laws of states which are in conflict with the Constitution of the United States and with its valid laws.

No state legislator or executive or judicial officer can war against the Federal Constitution without violating his oath, taken under Article 6, clause 3 thereof, to support it: if the legislatures of the several states may, at will, annul the judgments of the courts of the United States and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery. Cooper v Aaron, 358 US 1, 3 L ed 2d 5, 78 S Ct 1401.

Any State or Federal Judge, or other official, State or Federal, who is engaged in War against the Constitution of the United States, regardless of the form that his hostility may manifest itself, is liable to any one injured by his unlawful conduct in violation of

of any other duty spells out liability. Any other rule would permit a conspiracy by public officials to overthrow the Constitution of the United States.

If a judge swears to support the Constitution, he swears to uphold and support the rights of citizens and persons under the jurisdiction of the judge and according to that Constitution. It matters not that he claims that by law, custom or usage he has the authority or duty to deprive one of his rights as a United States citizen; if a judge commits such an act, he loses all claim to acting "WITHIN THE COURSE AND SCOPE" of his "duty".

It is indeed a contradiction to say that a judge "deprived a citizen of his Constitutional rights while acting "within the course and scope" of the judge's duties. It is impossible for a judge to deny Constitutional rights of a citizen while lawfully and faithfully adhering to the judge's oath of office. This is so obvious that it doesn't even require case law to substantiate it. Common sense and a knowledge of the English language is all that is required.

When a judge exceeds his jurisdiction and grants or denies that beyond his lawful authority to grant or deny, he has perpetrated a "non-judicial" action. Yates v Hoffman Estates (1962, DC Ill) 209 F Supp 757.

It is well established that judges may be enjoined from interfering with citizens' civil rights. Bramlett v Peterson (1969, DC Fla) 307 F Supp 1049. See also, Pierson v Ray, supra.

Judicial immunity is no defense to a judge acting in clear absence of jurisdiction. Bradley v Fisher (1871, US) 13 Wall 335.

The United States Circuit Court of Appeals, Second Circuit, has said:

> "The Civil Rights Acts in general, and Sec. 1983 in particular, are cast in terms so broad as to suggest that in suits brought under these sections common law doctrines of immunity can never be a bar. It should be equally clear that both the language and the purpose of the Civil Rights Acts are inconsistent with the application of common law notions of official immunity in all suits brought under these provisions." Jacobson v Henne (1966, CA2 NY) 355 F2d 129, 133-4, followed in Anderson v Nosser (1971, CA5, Miss) 428 F2d 183 F 2d 183, sol mod on other grounds 456 F 2d 835.

and further,

> "By the great weight of authority it is acknowledged that generally 'public officials' are not immune from suit when

they allegedly violate the civil rights of citizens' and that a 'public official's defense of immunity is to be sparingly applied in these kinds of cases." James v Ogilvie, (1970, NDIll) 310 F Supp 661, 663.

The Court of Appeals for the Sixth Circuit has reaffirmed its view that a judge loses all immunity when he acts in absence of all jurisdiction, and has held a referee of a juvenile court responsible in a section 1983 action for abuse of a child. Lucarell v McNair, (1972, CA6 Ohio) 453 F2d 836.

The Seventh Circuit Court of Appeals has held that a public official does not have immunity simply because he operates in a discretionary situation. It indicated that public servants are to be held liable when they abused their discretion or acted in a way that is arbitrary, fanciful or clearly unreasonable. Littleton v Berbling, (1972, CA7 Ill) 468 F2d 389.

The doctrine of judicial immunity is entirely judge-made. Nowhere in the Constitution of the United States does the doctrine that any man is above the law prevail. Even Congressmen, who have attempted to protect themselves (Article I, Section 6) from challenge for speeches or debates on the floor of Congress may have well left the door open wider than they belived by not including their "vote"--but only their "speech and debate".

It is maintained on behalf of the Defendant that a judge has absolute judicial immunity under the common law. Nothing could be further from the truth. Again, this is judge-made doctrine, and despite the claim that it is based in the common law, again we have judge-made deviations of the common law as the source of this misconception.

Assuming, without admitting, that there was common law immunity for judges, the clear language of the Civil Rights Statute, 1983, would do away with it. The language, "EVERY PERSON" does not mean, nor was it intended to mean "Every person except judges". If such had been the intent the statute would certainly have said so; but its lack of judicial immunity was the reason the statute was vetoed by President Johnson and had to be supported by two thirds of Congress to override the President's support of "judicial immunity".

In actuality, since the measure (sec. 1983) passed as a consequence of the Civil War and the liberation of slaves, it was particularly intended to protect Negros from the loss of Constitutional

rights "under the color of law". It is common sense apparent that the negros' deprivations of rights were coming with official actions of deputies, sheriffs, bailiffs, but more than anyone else, with the complicity of judges, who were the final arbiters in such cases.

At the time of the adoption of the Act, 1871, only 13 states out of 32 had adopted the "judicial immunity" doctrine. Let us ask the question, if judicial immunity was an absolute right under the common law, why had only 13 of 32 States adopted it by the end of the Civil War--almost a hundred years after thefounding of this Republic? Not only had a minority of the States adopted such doctrine, but the idea was judge-made doctrine, rather than that demanded by the people, who don't care to have anyone, including judges, above the law.(YLJ, infra)

Again, even had judicial or official immunity been an absolute right under the common law, said right would have been wiped out by the language and the intent of Congress when they passed the fore-runner of 42 USC sec. 1983.

Sec. 1983 is intended to give a remedy for money damages to those who suffer constitutional deprivations under the "color" of State law, custom or usage.

> "The bill was introduced by Rep. Shellaburger, who stated that the model for Section 1983 was the second section of the Civil Rights Act of 1866, and 'that section provides a criminal proceeding in identically the same case as this one provides a civil remedy for.' The Civil Rights Act of 1866 had been vetoed by President Johnson, partially BECAUSE IT SUBJECTED STATE JUDGES TO CRIMINAL LIABILITY. In the successful fight to overcome the veto, the chairman of the Senate Judiciary Committee attacked the entire concept be liable under the bill. (Emphasis added, from Vol 79, Yale Law Journal, page 327, citations from Congressional Globe ommitted, but given in original).

Nothing could be more clear as to the intent of the Congress which passed sec. 1983 It was passed OVER A PRESIDENTIAL VETO (the 1866 Civil Rights Act on which sec. 1983 was based) so that criminal sanctions could be imposed against judges who would be claiming that they were of course doing their duty and using their proper jurisdiction and not abusing their discretion nor acting outside the proper scope of their lawful duties.

The Civil Rights Act of 1866 was passed SO THAT CRIMINAL SANCTIONS COULD BE IMPOSED UPON JUDGES. At this point we might add,

"How inconsistent to claim that a federal judge is immune from the punishment which a State judge, swearing to uphold the same Constitition, is subjected to.

Discussing further the debates in Congress relating to the passage of what is now 42-1983, the Yale Law Journal, supra, continues on page 328:

> "On three occasions during the debates, legislators explicitly stated that JUDGES WOULD BE LIABLE UNDER THE ACT." (Emphasis added, Congressional Globe, 42nd Congress, 1st session 385 (1871) No one denied the statements." Bauers v Heisel, 361 F 2d 581 (3rd Cir 196)

Statements made during Congressional debate over what is now sec. 1983 include the following, from the Congressional Globe, 39th Cong., 1st Sess. 1680 (1866) (applied to the criminal counter part of sec. 1983, what is now 18 USC 241) and the President's Message To Congress giving his basis for objecting to the bill--the lack of JUDICIAL IMMUNITY.

Also the statement of Senator Trumbull, ibid, at page 1758:

> (The doctrine of immunity) "places officials above the law. It is the very doctrine out of which the rebellion was hatched."

and the statement of Senator Johnson, id, at page 1778:

> "Any judge...who is called upon to decide whether the State law is in force because this law is unconstitional, shall it be in force notwithstanding this law, is to be punished."

Here again we have the intent of one of the framers of the statute, that a judge should be punished for incorrectly using his discretion.

The remarks of Representative Lawrence, who also stated that judges would be liable under the 1866 Act:

> "I answer it is better to invade the judicial power of the States than permit it to invade, strike down, and destroy the civil rights of citizens. A judicial power perverted to such uses should be speedily invaded...And if an officer shall intentionally deprive a citizen of a right, knowing him to be entitled to it, then he is guilty of a willful wrong which deserves punishment. Id, 1832

It is alleged that, notwithstanding the foregoing to show that Congress had no intention of granting judicial immunity in Civil Rights suits, that such immunity was a part of the common law pervasive in England at the time of the founding of the Republic.

Were it so, and such is not conceded, although from time to time Kings and judges had encroached upon the common law and had attempted to make their corruptions a part of it, the entire concept of "official immunity" was thrown off by the Declaration of Independence, which had some pointed remarks about judges and trials and juries.

The Colonists, and particularly the Founding Fathers and those who ratified the Constitition and the Bill of Rights, were sick of so-called "judicial immunity". Many of the government's judges were hung in effigy; many had to flee during the Revolutionary War. The Colonists had been dragged into "Admiralty Courts", deprived of the common law right of a jury of the Defendant's peers. Judges served at the pleasure of the Crown, and the people were in general, powerless to punish judges who deprived them of their rights, other than through Boston Tea Parties and the like.

It is clear that in the formation of the independent States, doctrines such as "judicial immunity" were among the basic causes of the American Revolution.

This sentiment echoes through the entire Declaration of Independence, in such phrases as:

> "That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."
>
> "But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security."

further,

> "The history...is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States."

It is respectfully pointed out that this tyranny connot be imposed without the active cooperation and indulgence of officials of the state, including judges who uphold unlawful statutes and their

implementation. Why could a single person who stopps to impose tyranny and deprivation of natural rights, be above the law, even though his acts be "under color of law"?--and for that matter, state of federal law?

> "He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of salaries."

and, like today,

> "He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance."
>
> "He has combined with others to subject us to a jurisdiction foreign to our constition and unacknowledged by our laws; giving his assent to their acts of pretended legislation."

and,

> "For imposing taxes upon us without our consent:"

and,

> "For depriving us, in many cases, of the benefits of trial by jury."

All of the impositions complained of above, have been imposed through courts by judges. And it was a principal cause of the American Revolutionary War.

If the Colonists had available to them Civil Rights Statutes such as 42 USC sec. 1983, sec. 1985, sec. 1986 and sec. 1994 (and there is really no use for even having them if there is "official immunity") and had they been able to properly implement similar statutes against the protested abuses of the Crown, there would likely have been no Revolution.

If citizens oppressed by judges could readily sue those judges and have the matter determined by a jury, rather than by judges tempted to grant dismissals and summary judgments for their fellow judges and tyranny workers, the officers of government, why would there ever be a need for revolution?

Is it not the like of "judicial immunity" and "official immunity" which causes the people to resort to things like the Second Amendment right to bear arms?

Pierson v Ray, 386 US 547 is often pointed to as justifying judicial immunity.

To again quote from 79 Yale Law Journal, pages 326-7 (1969):

> "...Three separable reasons, however, may be discerned from the opinion.
> The first of these is that a judge's decision is appealable, and therefore, the party need not sue the judicial officer to vindicate his rights. (See Jennings, Note 11, supra, at 272 (E. Jennings, Tort Liability of administrative officers, 21 MINN L. REV.)
>
> "But dicisions of judicial officers are not necessarily appealable, (The appealibility argument applies to most judges, but not to judicial officers generally. For example, there are no procedures for appealing from the decisions of a prosecuting attorney or a prison warden.
> Thus, no rationale for a broad judicial immunity may be based upon vindication upon appeal, (footnote)
>
> "and appeal is not always a satisfactory remedy. The Court itself has recognized that a citizen's rights may be seriously violated even if he is not ultimately convicted. (Dombrowski v Pfister, 380 US 479 (1965). A plaintiff need not pursue his state remedies before instituting a sec. 1983 action. Monroe v Pape, 365 US 167 (1961), which would seem to recognize that appealibility simply is not sufficient protection.) (footnote)"

Other grounds for judicial immunity, advanced in Pierson, supra, are that judges would be subject to lawsuits, without immunity, and that fear of such lawsuits could detract from their "principled and fearless decision making". Plaintiff points out that no principled judge should let the concern of a lawsuit impede his duty to follow his oath of office to support the Constition, and that if he is afraid to follow his conscience because of a possible law-suit he should resign.

To paraphrase, "Un-principled and awesome decision-making", backed by cmg "judicial immunity" would, and does, wreak great harm upon the nation and upon individual rights.

The suggestion of impeachment as a remedy for wayward judges is inadequate and it "assumes something to be true which, by the very passage of the 1871 Act, Congress determined to be untrue: that state governments are always willing and able to enforce individual rights." 79 Yale Law Journal, p. 333.

To go to the common law itself, we find that its basic cornerstone is trial by jury--and the denial of a proper jury is part of the basis of this suit: and its denial deprived the Defendant judge of jurisdiction over the subject matter and over the person of the Defendant, and Defendant Judge's acts became his personal acts for

which he is personally liable to the Plaintiff.

DUE PROCESS, demonstrable through common law and the early history of this country, means that NO RIGHT OF LIBERTY OR PROPERTY CAN BE TAKEN WITHOUT A JURY OF PEERS CONSENTING THAT IT IS PROPER.

Jurisdictions all over this land have held that "due process of law", "due course of law", and "law of the land" were synonymous.

In giving meaning to Due Process of Law, the US Supreme Court has said:

> "The words "due process of law" are intended to convey THE SAME MEANING AS THE WORDS 'BY THE LAW OF THE LAND' IN MAGNA CARTA." (emphasis added). Murray v Hoboken Land Co., 59 US (18 How) 272, 15 L Ed 372.

The "law of the land" as meant in Magna Carta is apparent from reading from that base of the English constitution and the common law:

> Chapter 39.
>
> No free man shall be taken, imprisoned, disseized, outlawed, banished, or in any way destroyed, nor will We proceed against him, except by the lawful judgment of his peers and by the law of the land.
>
> Chapter 52.
>
> If anyone has been disseized or deprived by US, without the legal judgment of his peers, of lands, castles, liberties, or rights, We will immediately restore the same, and if any dispute...with regard to all those things, however, of which any man was disseized or deprived, without the legal judgment of his peers...We will at once do justice.

and, in Chapter 55.

> All fines unjustly and unlawfully given to Us, and all amercements levied unjustly and against the law of the land, shall be entirely remitted or the matter settled by judgment of the barons...
>
> Chapter 56.
>
> If we have disseized or dperived the Welsh of lands, liberties, or other things, without legal judgment of their peers, in England or Wales, they shall immediately be restored to them, and if a dispute shall arise thereon, the question shall be determined in the Marches by judgment of their peers according to the law of England...
>
> Chapter 57.
>
> But with regard to all those things of which any Welshman was disseized or deprived, without legal judgment of his peers...We will do full justice.
>
> Chapter 58.
>
> With regard to...his liberties and rights...this shall be determined by judgment of his peers in Our court.

From the foregoing it is most apparent that DUE PROCESS as understood by our Founding Fathers and those who accepted and ratified the Constitution and the Bill of Rights, meant that life, liberty or property could not be taken except by the method understood under the "law of the land" of Magna Carta. Nothing could be more plain than that the "law of the land" of Magna Carta meant no right or property deprivation without the consent of a jury of peers.

This, of course, acknowledged the lack of immunity of judges--in that all of their fines and seizures which had been unlawfully imposed had to be corrected and returned.

However, the greatest proof of the false myth of "judicial immunity" and of "official immunity" (again we point out that if there is no "judicial immunity" there is no "official immunity") being at odd with the common law comes from the 61st chapter of Magna Carta:

> If We or...Our chief justiciary fail to afford redress... the commonality of the WHOLE COUNTRY, SHALL DISTRAIN AND DISTRESS US TO THE UTMOST OF THEIR POWER, TO WIT, BY CAPTURE OF OUR CASTLES, LANDS, AND POSSESSIONS AND BY ALL OTHER POSSIBLE MEANS...

There it is. No "the King can do no wrong" nonsense. <u>This is the absolute negation of any immunity whatsoever under the common law.</u> If there is a truism and eternal maxim of the, the common law, unperverted by judge-made doctrine, it is that NO MAN IS ABOVE THE LAW, and EVERY MAN IS RESPONSIBLE FOR HIS OWN ACTS AND PUNISHABLE THEREFOR.

And Plaintiff herein again points out that that is the meaning given to all the world by that greatest pronouncement of the common law reduced to writing--the Declaration of Independence, wherein it says:

"But when a long train of abuses and usurpations, pursuing invariable the same object, evinces a design to reduce them under absolute despotism, IT IS THEIR RIGHT, IT IS THEIR DUTY, TO THROW OFF SUCH GOVERNMENT, and to provide new guards for their future security."

Plaintiff points out the "common-law-injunction" is embodied in the Second Amendment right to bear arms to guarantee individual liberty, and that it is the "great-equalizer" when tyranny will not stop.

Tyranny is being imposed every day in this country through its "constituted authorities" who are taking the "law into their own hands"

by refusing to be restrained by their oaths to support the Constitution.

Tyranny is being imposed every day by "constituted authorities" who seek to implement abortions of justice which perverted legislators seem to impose rather than the Constitutions they are sworn to uphold.

These "constituted authorities" need have no fear in facing a jury of their peers if they have done no wrong. A jury has the right to decide the "law and the facts" of the case. Georgia v Brailsford, 3 Dall 1, (1794). Surely a jury would not rule against a "constituted authority", including a judge, government lawyer or tax collector, or any government official, unless that official has done wrong, and has violated the true law of the land.

For citizens to tolerate "judicial immunity" or "official immunity is to waive their right against the "granting of titles of nobility", which though not hereditary, amounts to putting some persons above the law and immune from a proper accounting of their acts. Congress, nor the legislatures, nor the courts, have the right, under the Constitution, to grant any such immunity, for if they do the citizens have the natural and inherent right to rebel against such an assault upon the Constitution.

> "Legislative history makes evident that Congress clearly conceived that it was altering the relationship between the states and the nation with respect to the protection of federally created rights; it was concerned that state instrumentalities could not protect those rights; it realized that state officers might, in fact, be antipathetic to the vindication of those rights; and it believed that these failings extended to the state courts." Mitchum v Foster, 407

cited in Littleton v Berbler, 468 F2d 389 (1972), and which continued:

> "Congress possessed the power to wipe it out (absolute judicial immunity). We think that the conclusion is irresistable that Congress by enacting the Civil Rights Act Sub judice intended to abrogate the privilege to the extent indicated by that Act and in fact did so. Section 1 of the Third Civil Rights Act explicitly applied to 'any person.' We can imagine no broader definition. The statute must be deemed to include members of the state judiciary of the several states... but the policy involved is for Congress and not for the courts." Mitchum, supra, at 250.

Here we have the courts admitting that "judge-made doctrine" has tampered with the original intent of Congress in passing the statutes. It has been the courts, and not Congress, trying to claim that ju-

dicial and other governmental officials have "immunity" from the Civil Rights statutes.

> "So in deciding what Congress meant when it referred to 'every person' in 42 USC sec. 1983, it is significant that Congress had earlier rejected specifically absolute judicial immunity by passing the Civil Rights Act of 1866. Littleton v Berbler, 468 F2d 389 (1972)

It is clear that there is no authority in the Constitution of the United States for judicial or official immunity, other than possibly for speech and debate on the floor of Congress. Under the Ninth Amendment the people have the right to have their governmental, officials face the responsibility of their own acts--even for attempting to implement in good faith statutes which clash with Constitutional rights of the individual. There is absolutely no valid reason why State officials should be liable under Civil Rights statutes while federal personnel should pretend to escape liability for similar deprivations.

CONCLUSION: Judicial and official immunity under sec. 1983.

There is no constitutional authority, no statutory authority and no common law authority for "immunity" of governmental officials who deprive individuals of their natural rights protected by the Constitution of the United States and particularly under the Federal Civil Rights Acts; such "immunity" is judge-made doctrine for their own protection; it was not intended by that Congressional majority which overrode President Johnson's veto of the Civil Rights Act of 1866, from whence derives sec. 1983.

42 USC sec. 1985. (2)

> "...if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;"

The foregoing statute does not say "any persons except judges", or "any persons except state or federal officials". The case of ___ US ___, 29 L Ed 2d 619, 91 S Ct, Bivens v Six Unknown Named Agents of Federal Bureau of Narcotics in an opinion by Brennan, J., expressing the view of five members of the court, it was held that a violation of the Fourth Amendment's command against unreasonable searches

and seizures, by a federal agent acting under color of federal authority, gave rise to a federal cause of action for damages consequent upon the agent's unconstitutional conduct.

Sec. 1985, in its third paragraph states:

> "...in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

Sec. 1986 provides:

> "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section (sec. 1985 of Title 42) are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, of his legal representatives, for all damages caused by such wrongful act which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of pers as guilty of such wrongful neglect or refusal may be joined as defendants in the action,..."

Here again we see that we refer to "every person", or to "any person" and there is no exception as to judges, state or federal, or to any other government official, state or federal.

CONCLUSION: Judicial Immunity as to 42 USC 1983, 1985 and 1986.

Taking the above listed statutes together, we see that there is nothing in the Constitution of the United States or of most States which gives "judicial" or "official" immunity; likewise there is nothing in the statutes of the United States which makes a judge or other government official above the law; there is no such immunity under the common law--but on the contrary officials are liable for their acts under the common law; judicial immunity and official immunity are for the most part myths and judge-made doctrine; even federal personnel are liable for civil rights damage suits as shown in Bivens, supra.

Supplement to Doc. #25

Exhibit F

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RALPH J. LOMBARDI Plaintiff	)	CIVIL & CRIMINAL
Vs.	)	H-75-221
CHARLES BOCKHOLDT NORMAN EBENSTEIN, ATTY. JAMES F. COLLINS, JUDGE CHARLES S. HOUSE, JUDGE ALVA P. LOISELLE, JUDGE HERBERT S. MacDONALD, JUDGE JOSEPH W. BOGDANSKI, JUDGE JOSEPH S. LONGO, JUDGE, and M. JOSEPH BLUMENFELD, U.S.D.J. Defendants	)	September 12, 1975

CLAIM FOR SUMMARY JUDGEMENT
FOR THE PLAINTIFF

The Plaintiff claims a SUMMARY JUDGEMENT.

This Court, knowing the rules of evidence as to what constitutes an admission of guilt, need only do the following to warrant such a julgement:

1. Impartially, read the transcripts of the conversations and/or listen to the tapes. (Exhibits B and C of the Complaint)

2. Answer truthfully, the issues and questions raised by the Plaintiff in Exhibits B and C of the Complaint.

3. Look at all subsequent exhibits filed by the Plaintiff in support of said claims. Under the doctrine of "at first sight" this Court can decide the issues for the Plaintiff, on the basis of the constituted admissions in the transcripts made by Defendant CHARLES BOCKHOLDT. Any further evidence of each Defendants' deposition, direct examination and/or other exhibits, could only strengthen the Plaintiff's position.

4. Any court,

"May dispense with proof as to facts which are apparent on observation" 115C 168
(See Plaintiff's Exhibit B page 7)

Some of the proofs which are "apparent on observation" appear on the following pages listed of Exhibits A: (transcripts of conversations)

Conversation date	page	portion
6/1/73	6	top half
5/2/73	2	bottom
5/2/73	3	top
5/2/73	4	middle
5/2/73	5	middle
5/25/73	2	middle
5/25/73	4	bottom 3/4th
6/1/73	3	middle
6/1/73	4	top half
6/1/73	5	all
6/1/73	8	middle

and Exhibit C, pages 1, 2, 3, 4, and 11A.

See Wigmore 3rd edition page 415 paragraph 30 on Inferences
"The process of adducing evidence and passing upon probative value is and must be based ultimately on the canons of ordinary reasoning whether explicitly or implicitly employed"

Also in Wigmore 3rd edition page 423 on "Proof in Logic"
"The single inquiry is whether the argument offered as involving proof does really fulfill the logical requirements."

Should this Court fail to deny the Defendants' MOTION TO DISMISS and grant a SUMMARY JUDGEMENT for the Plaintiff, the Plaintiff expects this Court to order or subpoena all Defendants to appear in court for direct examinations as witnesses for the Plaintiff, whenever any hearings are scheduled, or allow depositions if any substantial delay is likely.

The Plaintiff expects this Court to deny the Defendants' MOTION TO DISMISS and to declare a SUMMARY JUDGEMENT for the Plaintiff.

Ralph J. Lombardi
Pro Se

I, Ralph J. Lombardi, do hereby certify that I have this date provided a copy of the foregoing CLAIM FOR SUMMARY JUDGEMENT FOR THE PLAINTIFF to M. Joseph Blumenfeld of 450 Main Street, Hartford, Connecticut, and mailed copies to the following:

Attorney General Carl R. Ajello
Attn: Daniel R. Schaefer, Assistant Attorney General
30 Trinity Street
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William R. Moller and/or Maurice T. FitzMaurice
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Hartford, Connecticut 06103

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750 Main Street
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Ralph J. Lombardi
224 So. Elm Street
Windsor Locks, Conn.

September 12, 1975

Filed by Andrew J. Melechinsky

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RALPH J. LOMBARDI, Plaintiff	)	CIVIL & CRIMINAL H-75-221
VS	)	
CHARLES BOCKHOLDT	)	
NORMAN EBENSTEIN, ATTY.	)	
JAMES F. COLLINS, JUDGE	)	
CHARLES S. HOUSE, JUDGE	)	
ALVA P. LOISELLE, JUDGE	)	
HERBERT S. MacDONALD, JUDGE	)	
JOSEPH W. BOGDANSKI, JUDGE	)	
JOSEPH S. LONGO, JUDGE, and	)	
M. JOSEPH BLUMENFELD. U.S.D.J., Defendants	)	September 29, 1975

AMICUS CURIAE BRIEF

ANDREW J. MELECHINSKY enters this case as an intervenor in order to point out errors of the Court which violate the civil and constitutional rights of Plaintiff RALPH J. LOMBARDI, co-counsel ANDREW J. MELECHINSKY, and of We the People.

Various actions of Court personnel violate The Constitution of the United States of America as follows:

1. Judge M. JOSEPH BLUMENFELD:
   a. Ignored a Motion for Injunction, violating Article VI, Par. 3,

> "all ..... judicial officers ..... of the United States ..... shall be bound by Oath or Affirmation to support this Constitution, ..."

Amendment 9,

> "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

and Amendment 10,

> "The powers not delegated to the United States by the Constitution ..... are reserved ..... to the people."

Also, by not granting the Motion for Injunction, Judge Blumenfeld has helped the Defendant State Judges violate Amendment Article 14,

> "No State shall ..... deny to any person within its jurisdiction the equal protection of the laws."

   b. Granted a precipitous and unilateral STAY OF DEPOSITIONS in violation of Article VI, Par. 3 and Amendment 9. This action also allowed the

Exhibit U

Exhibit U

Defendant State Judges to violate Amendment 14 as quoted above.

c. Exhibited bias and prejudice, according to testimony, in violation of Article VI, Par. 3 and Amendment Nine, quoted above.

NOTE: Judge BLUMENFELD refused an opportunity to deny said testimony. (See below)

d. Failed to voluntarily disqualify himself in violation of Article VI, Par. 3, quoted above.

e. Conducted a hearing in this case after being declared disqualified, in violation of Article VI, Par. 3, and Amendments 9 and 10 quoted above.

Conducted said hearing after being made a Defendant in the case; same violations.

g. Failed to honor the Plaintiff's CLAIM FOR A COMPETENT JUDGE by removing himself from the case, being knowledgeable of his constitutional incompetence; same violations.

h. Claimed immunity for Judges without Constitutional authority and in violation of the Constitutional laws quoted above.

i. "Cut off" the Plaintiff in violation of the Constitutional laws quoted above.

j. Announced a decision before the Plaintiff had completed presenting his case, in violation of the Constitutional laws quoted above.

k. Failed to consider the Plaintiff's CLAIM FOR INVIOLABILITY OF SUBPOENAE in violation of the Constitutional laws quoted above.

l. Granted a MOTION TO QUASH VARIOUS SUBPOENAE in violation of the Constitutional laws quoted above.

m. Failed to honor a Subpoena which required his attendance at a later hearing in violation of the Constitutional laws quoted above.

2. Judge T. EMMET CLARIE:

a. Refused to honor the right of ANDREW J. MELECHINSKY to act as co-counsel in the case, without Constitutional authority and in violation of the Constitutional laws quoted above.

b. Allowed a government attorney to appear without filing an appearance; a violation of the Equal Protection Clause of Amendment 14 when upgraded

to federal status under Amendment 9.

c. Failed to act on the Plaintiff's CLAIM FOR INVIOLABILITY OF SUBPOENAE, in violation of the Constitutional laws quoted above.

d. Continually referred to Court decisions (precedences) as law, in violation of Article VI, Par. 2, which says,

> "This Constitution ..... shall be the supreme Law of the Land; ....."

e. Failed to cite Judge BLUMENFELD for failure to appear at the hearing in violation of the Constitutional laws quoted above.

f. Granted a MOTION TO QUASH SUBPOENAE in violation of the Constitutional laws quoted above.

3. WILLIAM TEMPLETON, Deputy Clerk:
a. Sent a letter to ANDREW J. MELECHINSKY denying the right of said ANDREW J. MELECHINSKY to appear on behalf of the Plaintiff, without Constitutional authority and in violation of the Constitutional laws quoted above.

Intervenor ANDREW J. MELECHINSKY is shocked at the degree of ignorance (or contempt) of supreme law displayed by the above mentioned Court personnel, and the degree to which Judges have assisted each other in creating a body of immoral and unconstitutional "precedent" law.

INTERVENOR,

Andrew J. Melechinsky
Constitutional Attorney

2 Exhibits
1. Appearance
2. Letter from Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RALPH J. LOMBARDI, Plaintiff	)	CIVIL & CRIMINAL
vs	)	H-75-221
CHARLES BOCKHOLDT	)	
NORMAN EBENSTEIN, ATTY.	)	
JAMES P. COLLINS, JUDGE	)	
CHARLES S. HOUSE, JUDGE	)	
ALVA P. LOISELLE, JUDGE	)	
HERBERT S. MacDONALD, JUDGE	)	
JOSEPH W. BOGDANSKI, JUDGE	)	
JOSEPH S. LONGO, JUDGE, and	)	
M. JOSEPH BLUMENFELD, U.S.D.J., Defendants	)	September 26, 1975

APPEARANCE

TO THE CLERK:

Enter the appearance of the undersigned as co-counsel with and for the Plaintiff.

Andrew J. Melechinsky
Constitutional Attorney
Not Establishment Licensed

I certify that I have, this date, delivered and/or mailed a copy of the foregoing APPEARANCE to:

M. Joseph Blumenfeld
450 Main Street
Hartford, Conn.

William R. Moller and/or
Maurice T. FitzMaurice
41 Lewis Street
Hartford, Conn. 06103

Carl R. Ajello, Attorney General
Attn: Daniel R. Schaefer
30 Trinity Street
Hartford, Conn. 06115

John P. McKeon
750 Main Street
Hartford, Conn. 06103

Andrew J. Melechinsky
29 Fairfield Road
Enfield, Conn. 06082
September 26, 1975

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
OFFICE OF THE CLERK
UNITED STATES COURTHOUSE
450 MAIN STREET
HARTFORD 06103
TEL. NO. 244-3677

SYLVESTER A. MARKOWSKI
CLERK

September 26, 1975

Mr. Andrew J. Melechinsky
29 Fairfield Road
Enfield, Connecticut 06082

Re: Ralph J. Lombardi
Vs: Charles Bockholdt, Et Als
Civil Action No. H-75-221

Dear Mr. Melechinsky:

Your request to enter an appearance on behalf of the Plaintiff in the above-identified action, Ralph J. Lombardi, is denied.

Only attorneys-at-law who have been admitted to practice in the District of Connecticut Federal Court may represent parties in an action in this Court.

Very truly yours,

Sylvester A. Markowski
Clerk

By: _____
Deputy-in-Charge

T.C.
cc: Connecticut Bar Association
William R. Moller, Esq.
Daniel R. Schaefer, Esq.
John P. McKeon, Esq.

Copies to

You cannot deny my "request" to appear because I did not submit a request. I asserted a right. Rights cannot be denied. They can only be (honored or) violated.

Andrew J. Melechinsky